

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Library of Congress
Washington, DC

In re

**DETERMINATION OF ROYALTY RATES AND
TERMS FOR PERFORMANCE OR DISPLAY OF
NONDRAMATIC MUSICAL WORKS AND
PICTORIAL, GRAPHIC, AND SCULPTURAL
WORKS BY PUBLIC BROADCASTING
ENTITIES (PB III)**

**Docket No. 16-CRB-0002-PBR
(2018-2022)**

**SUBMISSION OF NATIONAL PUBLIC RADIO AND PUBLIC BROADCASTING
SERVICE**

National Public Radio (“NPR”) and Public Broadcasting Service (“PBS”) (each a “Party” to this proceeding and, collectively, the “Parties”) hereby submit proposed regulations, a draft of which is attached, to establish rates and terms pursuant to certain provisions of 17 U.S.C. § 118 for PBS, NPR and other public broadcasting entities (collectively the “Licensed Parties”) engaged in the activities set forth in 17 U.S.C. § 118 relating to the public performance of copyrighted works for the years 2018 through 2022 (the “2018-2022 Statutory License Term”).

By separate letters, each of the American Society of Composers, Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”) and SESAC Inc. (“SESAC”) have submitted or will timely submit to the Copyright Royalty Board, pursuant to 17 U.S.C. § 118 (b)(2), redacted versions of three separate final voluntarily-negotiated license agreements concerning the 2018-2022 Statutory License Term covering the public performance royalties due from the Licensed Parties for their performance of works licensed by, respectively: ASCAP, BMI and SESAC. As set forth in existing 37 CFR § 381.4 (as would be carried forward by the proposed regulations

attached as Exhibit A hereto), the provisions of 37 CFR § 381.4 govern performances of musical compositions by PBS, NPR and other public broadcasting entities except for performances of compositions which are the subject of voluntary license agreements or which are covered by 37 CFR §§ 381.5 and 381.6. The proposed changes to the regulations have been made to conform to the analogous provisions of 37 CFR § 381.5(c)(4) and § 381.6(d)(4) applicable to the performance of musical compositions under 17 USC § 118 by public broadcasting entities licensed to colleges and universities and other public broadcasting entities, which performances are the subject of proposals by other parties to this proceeding as set forth in a certain Joint Submission dated September 1, 2017 by and among ASCAP, BMI, The Harry Fox Agency LLC, the National Association of College and University Business Officers, the National Music Publishers' Association, the National Religious Broadcasters Noncommercial Music License Committee and SESAC. Attached as Exhibit B is a comparison document showing the proposed revisions to the current regulations.

Respectfully submitted,

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Dated: October 25, 2017

EXHIBIT A

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

- (a) Determination of royalty rate. The following rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements: the royalty shall be \$1.
- (b) Payment of royalty rate. The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.
- (c) Records of use. PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP, BMI or SESAC covering the license period January 1, 2018, to December 31, 2022, to provide a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

EXHIBIT B

§ 381.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(c).

(a) ~~Determination of royalty rate.~~ The following ~~schedule of~~ rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in activities set forth in 17 U.S.C. 118(c) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 381.5 and 381.6, and except for compositions which are the subject of voluntary license agreements: ~~the royalty shall be \$1. and except for compositions which are the subject of voluntary license agreements.~~

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(a) ~~Determination of royalty rate:~~

(1) ~~For performance of such work in a feature presentation of PBS:~~
~~2013-2017 — \$232.18~~

(2) ~~For performance of such a work as background or theme music in a PBS program:~~
~~2013-2017 — \$58.51~~

(3) ~~For performance of such a work in a feature presentation of a station of PBS:~~
~~2013-2017 — \$19.84~~

(4) ~~For performance of such a work as background or theme music in a program of a station of PBS:~~
~~2013-2017 — \$4.18~~

(5) ~~For the performance of such a work in a feature presentation of NPR:~~
~~2013-2017 — \$23.53~~

(6) ~~For the performance of such a work as background or theme music in an NPR program:~~
~~2013-2017 — \$5.70~~

(7) ~~For the performance of such a work in a feature presentation of a station of NPR:~~
~~2013-2017 — \$1.66~~

(8) ~~For the performance of such a work as background or theme music in a program of a station of NPR:~~
~~2013-2017 — \$.59~~

~~(9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.~~

~~(10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.~~

- (b) Payment of royalty rate. The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.
- (c) Records of use. PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that shall be required by the provisions of any voluntary license agreement with ASCAP, BMI or SESAC covering the license period January 1, 201~~8~~³, to December 31, 20~~22~~¹⁷, to provide a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

~~(d) Terms of use. The fees provided in this schedule for the performance of a musical work other than performances licensed by ASCAP, BMI or SESAC under the voluntary licenses referenced in subsection (a) of this paragraph shall cover performances of such work in such program for a period of four years following the first performance.~~

CERTIFICATE OF SERVICE

I, Tina Bishop, hereby certify that on this 25th day of October, 2017, a copy of the foregoing **“SUBMISSION OF NATIONAL PUBLIC RADIO AND PUBLIC BROADCASTING SERVICE”** was served via eCRB and overnight delivery on the parties listed below.

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/s/ Tina Bishop

Tina Bishop

Certificate of Service

I hereby certify that on Wednesday, October 25, 2017 I provided a true and correct copy of the Motion - Other to the following:

Church Music Publishers' Association (CMPA), represented by J. Rush Hicks served via Overnight Service

Educational Media Foundation (EMF), represented by David Oxenford served via Overnight Service

National Religious Broadcasters Noncommercial Music License Comm. (NRBNMLC), represented by Karyn K Ablin served via Electronic Service at ablin@fhhlaw.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Broadcast Music, Inc. (BMI), represented by Joseph DiMona served via Electronic Service at jdimona@bmi.com

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Harry Fox Agency (HFA), represented by John C. Beiter served via Electronic Service at jbeiter@lsglegal.com

National Music Publishers Association (NMPA), represented by David Israelite served via Overnight Service

SESAC, Inc., represented by John C. Beiter served via Electronic Service at jbeiter@lsglegal.com

Signed: /s/ Joseph Wetzel